



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA-174445

PRELIMINARY RECITALS

Pursuant to a petition filed May 19, 2016, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to modify a Medical Assistance (MA) authorization for personal care worker (PCW) services, a hearing was held on July 5, 2016, by telephone.

The issue for determination is whether the agency correctly reduced requested PCW hours.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Written submission of [REDACTED]

[REDACTED] Nurse Consultant

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County who receives MA.
2. Petitioner has a number of diagnoses that prevent her from providing for her own activities of daily living (ADLs). Diagnoses include multiple sclerosis, diabetes, chronic back pain, fibromyalgia, and torn left rotator cuff. Until the action at issue in this case petitioner received MA coverage for 8.25 hours per day PCW services.
3. On February 3, 2016 Dane County Dept. of Human Services requested authorization for 61.25 hours per week PCW services (8.75 hours per day), PA no. [REDACTED]. The personal care

screening tool submitted with the request called for 46.75 hours per week, but the provider requested additional hours in a Personal Care Addendum attached to the PA request.

4. The DHCAA granted 43.75 hours per week PCW services. Petitioner was notified of the determination by a letter dated March 22, 2016. The letter told petitioner that she could appeal if she disagreed, with the final date for appealing being May 6, 2016. In a separate notice to the provider the DHCAA noted that one reason for the reduction was that there were no medial orders for complex positioning; it suggested that the provider file an amendment if the orders were obtained. The amendment was filed March 28, 2016, and on April 22 the DHCAA approved the additional 3.5 hours per week for complex positioning, bringing up the total approved hours to 47.25 per week.
5. Petitioner filed this appeal via fax on May 19, 2016 seeking coverage to the originally requested 61.25 hours per week.

DISCUSSION

Personal care services are “medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community.” Wis. Admin. Code §DHS 107.112(1)(a). Covered services include the following:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Admin. Code, §DHS 107.112(b).

Personal care workers can spend no more than one-third of their time performing housekeeping activities. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3.

The DHCAA now utilizes a Personal Care Screening Tool, a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the DHCAA's reviewer can then adjust to account for variables missing from the screening tool's calculations. The Department also now uses a Personal Care Activity Time Allocation Table to determine allotted times for PCW tasks, which the DHCAA follows unless the request explains specifically why additional time is necessary. The Table is found as Attachment 6 to Nurse Consultant [REDACTED]'s June 22, 2016 case summary.

An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. §49.45(5)(a); Wis. Admin. Code, §HA 3.05(3)(a). Language concerning the right to appeal and the time limit is included on all department notices sent to MA recipients. The date of filing is the date the written

appeal is received by the agency or the postmark date, whichever is earlier. Admin. Code, §HA 3.05(3)(c). If an appeal is untimely the Division of Hearings and Appeals lacks jurisdiction to consider the petitioner's position on the merits.

In this case the Department notified petitioner of the reduced PCW hours by a letter dated March 22, 2016. The 45-day limit for appealing the notice was May 6, 2016. The Department did note that 3.5 hours per week were denied specifically due to lack of medical orders for complex positioning, and the provider filed an amendment for those 3.5 hours per week, which were granted. The amendment did not request any additional PCW hours that were denied March 22. The amendment for and the granting of those 3.5 hours per week in April did not reopen the entire PA process; petitioner's appeal now is for all the other denied hours, but her appeal was filed 13 days after the deadline.

At this point the provider would have to request an amendment to the PA approval specifically asking for and justifying additional PCW hours beyond the 47.25 hours already approved. The provider now knows, from Nurse [REDACTED]'s June 22 case summary, why no time was granted from eating (there is no order for aspiration precautions or no evidence of actual intervention with choking episodes; MA does not cover simple supervision), and why a 45-minute exercise/range of motion session was not approved (not actually range of motion and lack of physical therapy evaluation). The PT evaluation provided for the hearing can be submitted with an amendment request.

CONCLUSIONS OF LAW

Petitioner's appeal of a reduction in requested PCW hours was filed untimely; Department action on an amendment for a specific 3.5 hour block of time denied for lack of medical orders did not extend the deadline for appealing the rest of the PCW hour reductions adjudicated March 22, 2016.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES

IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 11th day of July, 2016

\s _____
Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 11, 2016.

Division of Health Care Access and Accountability